

FILE COPY

U.S. - Supreme Court, U.
S. FILLED
MAR 24 1948

CHARLES ELMORE CHIEF CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1947.

No. 688.

G. H. BEAVERS, *Petitioner*,

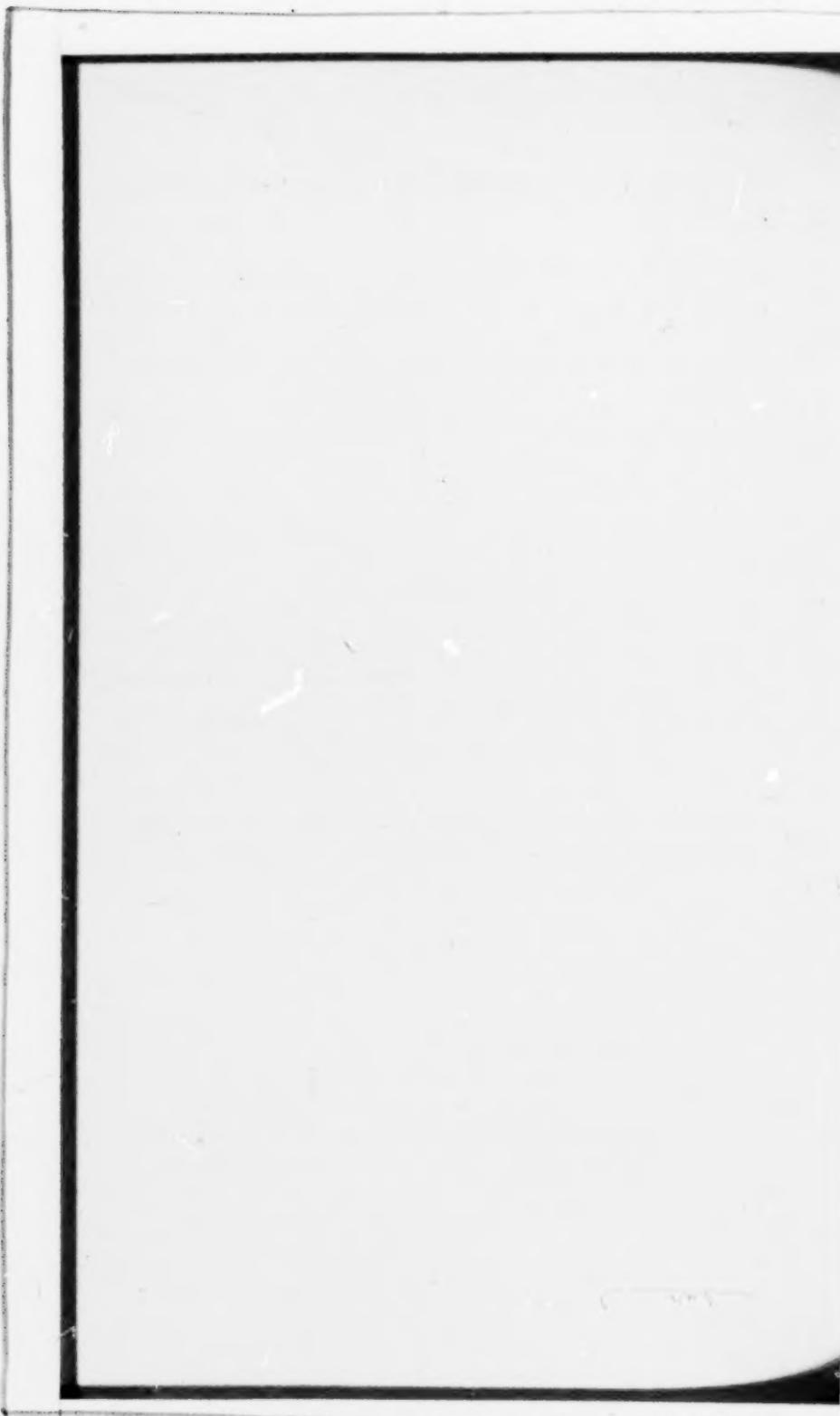
v.

COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

ROBERT ASH,
Munsey Building,
Washington 4, D. C.,
Attorney for Petitioner.

March 24, 1948.



INDEX.

| | Page |
|---|------|
| Jurisdiction | 1 |
| Question Presented | 2 |
| Summary Statement of Matter Involved | 2 |
| Reasons Relied on for the Allowance of the Writ.... | 3 |
| Appendix | 6 |

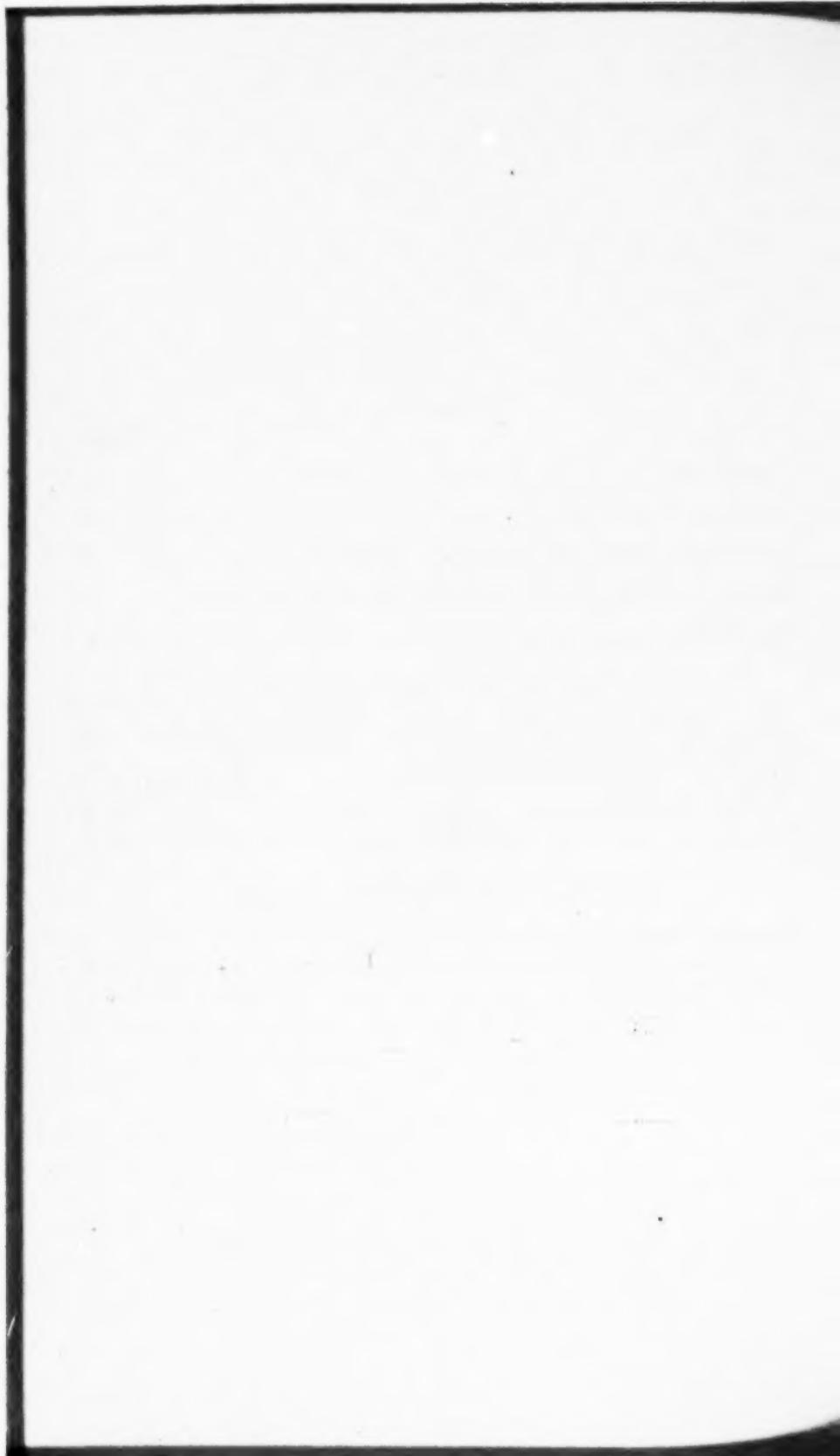
TABLE OF CASES CITED.

| | |
|--|------|
| Bacon, Hopkins v., 282 U. S. 122 | 5 |
| Francis, Charles I., Commissioner v., 8 T. C. 822..... | 3 |
| Hoeper v. Tax Commission of Wisconsin, 284 U. S. 206 | 4, 5 |
| Rompel, United States v., 326 U. S. 367 | 3, 4 |
| Wiener, Fernandez v., 326 U. S. 340 | 3, 4 |

OTHER AUTHORITIES CITED.

Internal Revenue Code.

| | |
|-------------------------|---------|
| Section 811(e)(2) | 3, 6 |
| Section 1000(d) | 2, 3, 6 |



IN THE
Supreme Court of the United States
OCTOBER TERM, 1947.

No.

G. H. BEAVERS, *Petitioner*,
v.
COMMISSIONER OF INTERNAL REVENUE, *Respondent*.

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT.**

*To the Honorable, The Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

G. H. Beavers prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above-entitled case December 26, 1947 (R. 38). The Circuit Court affirmed a decision of The Tax Court of the United States (R. 17) sustaining a deficiency in gift tax liability for the calendar year 1943, against G. H. Beavers in the amount of \$7,886.79.

JURISDICTION.

The judgment of the Circuit Court of Appeals sought to be reviewed was entered December 26, 1947. Jurisdiction to issue the writ requested is found in Section 240 of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED.

Is section 1000(d), Internal Revenue Code, which was added to the Code by section 453 of the Revenue Act of 1942, constitutional?¹

The said section provides that all gifts of community property shall be considered to be the gifts of the husband, except that gifts of such property as may be shown to have been received as compensation for personal services actually rendered by the wife, or derived originally from such compensation or from separate property of the wife shall be considered to be the gifts of the wife.

SUMMARY STATEMENT OF MATTER INVOLVED.

The facts pertinent to this petition, which appear at pages 25-31 of the record, may be summarized as follows:

The petitioner and his wife are and, at all times herein material, were residents of Benjamin, Texas. Prior to and on April 21, 1943, petitioner and his wife, Linnie D. Beavers, owned in community certain land in Knox County, Texas.

On April 21, 1943, wholly without consideration, petitioner and his wife executed a deed transferring 12,138 acres of the said land in Knox County, Texas (exclusive of an undivided one-half interest in the mineral rights retained by the grantors) to their two children.

Under the constitution and laws of the State of Texas, the said lands made the subject of the gift were community property of petitioner and his wife. No part of such property, or the funds used to procure such property, was received as compensation for personal services actually rendered by the wife or derived originally from such compensation or from the separate property of the wife.

Petitioner reported one-half of the value of the property as his gift, and his wife reported the other one-half as hers. Under the authority of § 1000(d) of the Internal Revenue Code, the Commissioner of Internal Revenue taxed the en-

¹ Section 1000(d) is printed in full at page 6 of this petition.

tire value of the gift to petitioner. Appealing to The Tax Court, petitioner attacked as unconstitutional the section under which the Commissioner's determination was made. That Court held on the authority of *Charles I. Francis v. Commissioner*, 8 T. C. 822 that the assailed statute was constitutional and affirmed the Commissioner's determination.

The Circuit Court of Appeals affirmed The Tax Court on the authority of *Fernandez v. Wiener*, 326 U. S. 340 and *United States v. Rompel*, 326 U. S. 367.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I.

The case presents an important question of federal law which has not been, but should be, settled by this Court.

This Court has not ruled upon the constitutionality of § 1000(d),² Internal Revenue Code. All residents of the several community property states who have made or may make gifts of community property are affected by the section. It is important to this large group of citizens that this Court pass on the constitutionality of the section.

II.

The reasoning of this Court in *Fernandez v. Wiener*, 326 U. S. 340, and *United States v. Rompel*, 326 U. S. 367, is not applicable to the question here presented.

The Revenue Act of 1942 added to the Internal Revenue Code not only the section here assailed but also a companion section (811(e)(2)³) dealing with estate taxes on community property. This Court in the *Wiener* and *Rompel* cases sustained the constitutionality of the estate tax amendment on the reasoning that upon the death of one

² Section 1000(d) is printed in full at page 6 of this petition.

³ Section 811(e)(2) is printed in full at page 6 of this petition.

spouse the surviving spouse acquired a bundle of rights of management not theretofore held. The acquisition of such new rights was held to justify the imposition of the excise.

In the case at bar there was a gift of community owned real estate. By making the gift neither spouse acquired rights not previously held. Consequently, the reasoning of the *Wiener* and *Rompel* cases cannot apply to the case at bar. The following language shows the correctness of petitioner's position.

This Court, in the *Rompel* case, states at page 370:

"The death of either the husband or the wife of the Texas community thus effects sufficient alteration in the spouses' possession and enjoyment and reciprocal powers of control and disposition of the community property as to warrant the imposition of an excise tax measured by the value of the entire community."

In the *Wiener* case, this Court states at page 358:

"* * * While it may generally be true, as appellees argue, that neither the husband or the wife gains any over-all financial advantage when the other dies, it suffices that the decedent loses and the survivor acquires, with respect to the property taxed, substantial rights of enjoyment and control which may be of value. * * *"

If the rule of *stare decisis* is to be followed, Courts should apply the reasoning and logic of prior decisions. Such was not done by the Courts below in the case at bar. This Court should pass on the important question here involved.

III.

The decision below is in conflict with *Hooper v. Tax Commission of Wisconsin*, 284 U. S. 206.

In the case at bar petitioner's tax is measured by his wife's property. This Court in the *Hooper* case states:

"We have no doubt that, because of the fundamental conceptions which underlie our system, any attempt by

a state to measure the tax on one person's property or income by reference to the property or income of another is contrary to due process of law as guaranteed by the 14th Amendment. That which is not in fact the taxpayer's income cannot be made such by calling it income. * * *"

The *Hooper* case refers to the 14th Amendment. There is no reason, however, why the reasoning does not apply with equal force to the 5th Amendment. Estate tax laws have been held to violate the 5th Amendment.

It is thoroughly established that a wife has a present vested interest equal to the husband in community property. *Hopkins v. Bacon*, 282 U. S. 122. The challenged section attempts to levy a tax on a gift of property not owned by the donor. In so doing, it is arbitrary and capricious, and violates the due process clause of the 5th Amendment.

Respectfully submitted,

ROBERT ASH,
Munsey Building,
Washington 4, D. C.,
Attorney for Petitioner.

March 24, 1948.

APPENDIX.

Sections 811 (e)(2) and 1000(d), Internal Revenue Code.

Section 811(e)(2) Community interests.—To the extent of the interest therein held as community property by the decedent and surviving spouse under the law of any State, Territory, or possession of the United States, or any foreign country, except such part thereof as may be shown to have been received as compensation for personal services actually rendered by the surviving spouse or derived originally from such compensation or from separate property of the surviving spouse. In no case shall such interest included in the gross estate of the decedent be less than the value of such part of the community property as was subject to the decedent's power of testamentary disposition.

Section 1000(d). Community Property.— All gifts of property held as community property under the law of any State, Territory, or possession of the United States, or any foreign country shall be considered to be the gifts of the husband except that gifts of such property as may be shown to have been received as compensation for personal services actually rendered by the wife or derived originally from such compensation or from separate property of the wife shall be considered to be gifts of the wife.